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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Jordan L Morris,

10 Plaintiff,

11 v.

12 Pacific Dental Services LLC, et al.,

13 Defendants.
14

No. CV-22-00370-TUC-JGZ

ORDER

15 Plaintiff Jordan Morris brings this action against his former employers, PDS
16 Arizona Regional Dental Services, LLC (PARDS) and Pacific Dental Services, LLC
17 (PDS), asserting claims under the Americans with Disabilities Act (ADA) and the Arizona
18 Fair Wages and Healthy Families Act. (Doc. 1 ¶¶ 74–102.) Pending before the Court is
19 Defendants’ Motion to Dismiss and Compel Arbitration. (Doc. 18.) Defendants assert that
20 all of Morris’s claims arise out of his employment and are subject to an arbitration
21 agreement under the Federal Arbitration Act (FAA). (*Id.* at 2; *see* Doc. 18-1 at 15–16.)
22 They seek dismissal of the Complaint and an order compelling Morris to submit his claims
23 to binding arbitration. (Doc. 18 at 1.) Morris argues the FAA does not apply and the
24 arbitration agreement is void and unenforceable. (Doc. 19 at 7–14.) The Court requested
25 that the parties submit supplemental briefs addressing whether the arbitration agreement
26 arose from a contract evidencing a transaction involving commerce. (Doc. 21.) The motion
27 is fully briefed, (Docs. 18–20), and the parties submitted the requested supplemental briefs,
28 (Docs. 22–23). For the following reasons, the Court will grant Defendants’ motion.

BACKGROUND

Morris was employed by PARDS and PDS as an Associate Dentist in January 2017 and became a partner in January 2018. (Doc. 1 ¶¶ 15–18.) He was terminated from his employment on September 22, 2021. (*Id.* ¶¶ 57–58.)

In the course of his employment with Defendants, Morris executed a number of agreements, including an Amended and Restated Dentist Employment Agreement (Employment Agreement), (Doc. 18-1 at 3–7), and an Amended and Restated Binding Arbitration Agreement (Arbitration Agreement), (*id.* at 15–16). The Employment Agreement sets out the terms of Morris’s employment. The Arbitration Agreement requires the parties to arbitrate “all disputes that may arise out of the employment context.” (*Id.* at 15 ¶ 1.)¹ The specific provision of the Arbitration Agreement at issue in this lawsuit states:

Because of the mutual benefits (such as reduced expense and increased efficiency) which private binding arbitration can provide both PARDS and Employee, both PARDS and Employee agree that any claim, dispute, and/or controversy (including, but not limited to, any claims of discrimination and harassment, whether they be based on local or state law, Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Family and Medical Leave Act, the Fair Labor Standards Act or other local, state or federal laws or regulations) that the Employee or PARDS may have against the other shall be submitted to and determined exclusively by binding arbitration under the Federal Arbitration Act, in conformity with the procedures set forth in the applicable statutes. This specifically includes any claim . . . Employee may have against PARDS, which would otherwise require or allow resort to any court or other governmental dispute resolution forum arising from, related to, or having any relationship or connection whatsoever with Employee’s seeking employment with, employment by, termination of employment, or other association with PARDS.

(*Id.*) The Arbitration Agreement specifies that arbitration proceedings be held in Orange County, California, and that they be administered by JAMS. (*Id.* at 15 ¶ 3.) Finally, the Agreement states: “It is the intent of the parties that the arbitration provisions hereof be enforced to the fullest extent permitted by applicable law, including but not limited to the

¹ The Arbitration Agreement also contains a list of claims that are not covered by the Agreement. (Doc. 18-1 at 15 ¶ 2.) This action does not assert any of the excluded claims.

1 Federal Arbitration Act, 9 U.S.C. § 2.” (*Id.* at 15 ¶ 3(D).)

2 In his Opposition, Morris points to another agreement the parties executed in the
3 course of his employment—the Amended and Restated Partnership Agreement of Tortolita
4 Dental Group and Orthodontics, LLP (Partnership Agreement), (Doc. 19-1 at 2–27), which
5 has different provisions for arbitration than those contained in the Arbitration Agreement.
6 The Partnership Agreement provides for mandatory binding arbitration of certain claims—
7 “[a]ny dispute, claim, or controversy that may arise under or relate to this Agreement
8 (including the validity, scope and enforceability of this arbitration provision),”—but, in
9 contrast to the Arbitration Agreement, requires that the arbitration proceedings be held “in
10 a county mutually agreeable to the parties in the State of Arizona, and [] be administered
11 by American Arbitration Association (AAA) in accordance with its applicable rules”
12 (*Id.* at 26 ¶ 12.10(b).)

13 **APPLICABLE LAW**

14 Arbitration is matter of contract between the parties. An agreement to arbitrate is “a
15 way to resolve those disputes—but only those disputes—that the parties have agreed to
16 submit to arbitration.” *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 943 (1995). A
17 written agreement to arbitrate in “a contract evidencing a transaction involving commerce”
18 is governed by the FAA, which provides that any arbitration agreement within its scope
19 “shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in
20 equity for the revocation of any contract.” 9 U.S.C. § 2.

21 A motion to compel arbitration is decided according to the standard used by district
22 courts in resolving summary judgment motions pursuant to Rule 56 of the Federal Rules
23 of Civil Procedure. *Coup v. Scottsdale Plaza Resort, LLC*, 823 F. Supp. 2d 931, 939 (D.
24 Ariz. 2011). The FAA “leaves no place for the exercise of discretion by a district court, but
25 instead mandates that district courts shall direct the parties to proceed to arbitration on
26 issues as to which an arbitration agreement has been signed.” *Dean Witter Reynolds, Inc.*
27 *v. Byrd*, 470 U.S. 213, 218 (1985); *see* 9 U.S.C. § 4. Thus, if the FAA applies, the Court
28 must determine: (1) whether a valid agreement to arbitrate exists; and (2) if so, whether the

1 arbitration agreement encompasses the dispute or claims at issue. *Chiron Corp. v. Ortho*
 2 *Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000).

3 DISCUSSION

4 In Opposition to Defendants’ Motion to Dismiss and Compel Arbitration, Morris
 5 argues that: (1) the FAA does not apply here because the parties’ agreements are for
 6 performance of a dental practice solely within the State of Arizona; (2) the arbitration terms
 7 regarding JAMS and AAA in the Arbitration Agreement and Partnership Agreement are
 8 conflicting and therefore void and unenforceable; and (3) four arbitration provisions should
 9 be held unenforceable or unconscionable and the entirety of the arbitration provisions
 10 found void. The Court addresses each argument.

11 I. The Parties’ Agreement Falls within the Scope of the FAA.

12 The Arbitration Agreement provides that disputes between Morris and PARDS:
 13 “shall be submitted to and determined exclusively by binding arbitration under the Federal
 14 Arbitration Act, in conformity with the procedures set forth in the applicable statutes.”
 15 (Doc. 18-1 at 15 ¶ 1.) The Arbitration Agreement further states: “It is the intent of the
 16 parties that the arbitration provisions hereof be enforced to the fullest extent permitted by
 17 applicable law, including but not limited to the Federal Arbitration Act, 9 U.S.C. § 2.” (*Id.*
 18 at 15 ¶ 3(D).) So long as the exceptions in § 1 do not apply, the reach of FAA § 2 extends
 19 to any “contract evidencing a transaction involving commerce.” *See* 9 U.S.C. §§ 1–2. The
 20 Court finds that the Arbitration Agreement evidences a transaction involving commerce
 21 and that the FAA governs the agreement.

22 The term “involving commerce” in the FAA signals the broadest permissible
 23 exercise of Congress’s Commerce Clause power. *Citizens Bank v. Alafabco, Inc.*, 539 U.S.
 24 52, 56 (2003). Under the Commerce Clause, Congress can regulate purely local activities
 25 that, as an economic class of activities, have a substantial effect on interstate commerce.
 26 *Gonzales v. Raich*, 545 U.S. 1, 17 (2005). The FAA thus governs in individual cases, even
 27 those lacking a specific effect upon interstate commerce, if in the aggregate the economic
 28 activity in question would represent a general practice subject to federal control. *Citizens*

1 *Bank*, 539 U.S. at 56–57.

2 Morris argues his work for Defendants does not involve interstate commerce
3 because his employment agreement restricts his employment to Arizona where he holds an
4 Arizona Dental License. (Doc. 19 at 7.) Morris also argues he worked at a single location
5 in Tucson, Arizona; performed no dental services outside the state; and was not responsible
6 for procuring out-of-state supplies for the dental office where he worked. (Doc. 23 at 2.)
7 As a result, Morris contends the FAA does not govern and the Court must look to Arizona
8 law, which provides that agreements to arbitrate between employers and employees are
9 unenforceable.² (Doc. 19 at 6.)

10 As Defendants point out, Morris’s employment involved a number of interstate
11 activities. Nearly all supplies and equipment used by Morris in his dental practice were
12 procured by PDS from outside of Arizona. (Doc. 22 at 2.) Morris also traveled to out-of-
13 state professional meetings organized by PDS, including a September 2021 meeting held
14 in Dallas, Texas. (*Id.* at 3.) On at least three occasions, Morris met with a PDS leadership
15 coach who resided in California. (*Id.*) These activities alone, in the context of one dentist’s
16 purely local practice, might not affect or involve interstate conference. However, they fall
17 squarely within an economic class of activities and, in the aggregate, they have a substantial
18 effect on interstate commerce. *See Citizens Bank*, 539 U.S. at 56–57; *Raich*, 545 U.S. at 17.

19 Morris urges the Court to take a narrower view of the term “involving commerce.”
20 In support, he cites *Gulf Oil Corp. v. Copp Paving Co.*, 419 U.S. 186 (1974), and *United*
21 *States v. American Building Maintenance Industries*, 422 U.S. 271 (1975). (Doc. 23 at 3.)
22 In *Gulf Oil Corp.*, the Supreme Court interpreted the term “engaged in commerce” as stated
23 in §§ 3 and 7 of the Clayton Act and § 2 of the Robinson-Patman Act. 419 U.S. at 193–94.
24 Likewise, in *American Building Maintenance Industries*, the Supreme Court interpreted
25 the “engaged in commerce” language in § 7 of the Clayton Act. 422 U.S. at 275. In both
26 cases, the Supreme Court held that the phrase “engaged in commerce” did not reflect

27 ² The Arizona Arbitration Act “*shall not apply* to an agreement to arbitrate any existing or
28 subsequent controversy . . . [b]etween an employer and employee or their respective
representatives.” A.R.S. § 12-3003(B)(1) (emphasis added).

1 Congress’s full exercise of power under the Commerce Clause. *Gulf Oil Corp.*, 419 U.S.
 2 at 201–02; *Am. Bldg. Maint. Indus.*, 422 U.S. at 280. The term “involving commerce” in
 3 § 2 of the FAA, by contrast, does signal Congress’s full exercise of power under the
 4 Commerce Clause. *Citizens Bank*, 539 U.S. at 56; *see also Sw. Airlines Co. v. Saxon*, 142
 5 S. Ct. 1783, 1789 (2022) (“We observed that Congress used ‘more open-ended
 6 formulations’ like ‘affecting’ or ‘involving’ commerce to signal ‘congressional intent to
 7 regulate to the outer limits of authority under the Commerce Clause.’ By contrast, Congress
 8 used a ‘narrower’ phrase—‘engaged in commerce’—when it wanted to regulate short of
 9 those limits.”) (internal citations omitted). Morris’s reliance on *Gulf Oil Corp.* and
 10 *American Building Maintenance Industries* is thus misplaced. With the full authority of the
 11 Commerce Clause, § 2 of the FAA governs the economic activities of local dentists, such
 12 as Morris, who receive and use out-of-state services, supplies, and equipment.

13 **II. A Valid Agreement To Arbitrate Exists.**

14 Morris argues that no valid agreement to arbitrate exists because material terms in
 15 the Arbitration Agreement are in conflict with the arbitration provision in the Partnership
 16 Agreement, making both void. (Doc. 19 at 9–10.) Morris also argues that the Arbitration
 17 Agreement is unenforceable because it contains unconscionable provisions, deprives him
 18 of the statutory right to seek punitive and non-economic damages, and awards fees to a
 19 prevailing defendant. (*Id.* at 10–15.) The Court agrees in part.

20 Courts generally apply ordinary state-law principles when deciding whether the
 21 parties agreed to arbitrate a matter. *First Options of Chi., Inc.*, 514 U.S. at 944. State-law
 22 contract defenses such as fraud, duress, and unconscionability can be applied to invalidate
 23 arbitration agreements. *Doctor’s Assocs., Inc. v. Casarotto*, 517 U.S. 681, 687 (1996);
 24 *Ticknor v. Choice Hotels Intern.*, 265 F.3d 931, 936–37 (9th Cir. 2001). If a court finds a
 25 portion of an agreement is unenforceable or void, but the agreement contains a severability
 26 clause, the court may sever the unenforceable portion and enforce the remainder of the
 27 agreement. *See Cooper v. QC Fin. Servs., Inc.*, 503 F. Supp. 2d 1266, 1291 (D. Ariz. 2007).
 28 Applying these principles, the Court finds that the parties entered into a clear and

1 unmistakable agreement to arbitrate claims arising out of Morris’s employment. The Court
 2 further finds that the agreement is enforceable except for one provision which can be
 3 modified to be consistent with the law.

4 **A. The Arbitration Agreement’s Forum Provision Is Not Void.**

5 Morris argues that a conflict between the arbitration forum provisions in the
 6 Arbitration Agreement and the Partnership Agreement shows “there was no meeting of the
 7 minds on the material terms of arbitration,” and thus those terms are void. (Doc. 19 at 8–
 8 9.) The Arbitration Agreement, which applies to disputes arising out of the Employment
 9 Agreement, provides that “arbitration proceedings shall be held in Orange County,
 10 California, and shall be administered by JAMS.” (Doc. 18-1 at 15 ¶ 3(B).) The Partnership
 11 Agreement—which organizes an Arizona limited liability partnership between Morris,
 12 PARDS, and a non-party dentist—provides that any dispute arising under or relating to the
 13 Partnership Agreement must be submitted to binding arbitration “in a county mutually
 14 agreeable to the parties in the State of Arizona, and shall be administered by the American
 15 Arbitration Association.” (Doc. 19-1 at 26 ¶ 12.10(b).) Morris is incorrect that these two
 16 provisions are in conflict.

17 Morris’s claims do not arise out of the Partnership Agreement. Morris’s Complaint
 18 alleges disability discrimination in violation of the ADA and unlawful retaliation in
 19 violation of Arizona law. These claims arise only out of his employment relationship with
 20 PARDS and PDS, and are therefore governed by the Employment Agreement and the
 21 arbitration provisions contained in the separate Arbitration Agreement. Morris’s claims do
 22 not relate to the Tortolita Dental Group partnership; thus, the Partnership Agreement is not
 23 implicated here. (*See* Doc. 1 ¶ 1.) In Claim One, Morris specifically alleges violations of
 24 the ADA and disability discrimination in employment. Claim One states: “Defendants
 25 jointly are employers and Plaintiff a qualified employee within the definitions of the ADA,
 26 42 U.S.C. §§ 12102(2) and 12111(2), (4), and (5).” (*Id.* ¶¶ 75–76.) In Claim Two, Morris
 27 alleges that Defendants violated the anti-retaliation provision of Arizona’s paid sick leave
 28 law, which applies to retaliation by an employer against an employee who requests or uses

1 paid sick time for a qualifying reason. (*Id.* ¶¶ 91–93.) Morris’s claims do not relate to a
2 breach of the Partnership Agreement, and Morris does not seek to enforce that agreement
3 or pursue any remedies arising out of that agreement. Therefore, the arbitration terms in
4 the Partnership Agreement are irrelevant and no conflict exists between the Partnership
5 Agreement and the Arbitration Agreement. Consequently, there is no reason to conclude
6 that the parties did not have a meeting of the minds when they entered into the Arbitration
7 Agreement and agreed to arbitrate claims arising out of the employment relationship before
8 JAMS in Orange County, California.

9 **B. The Choice of Forum and Confidentiality Terms Are Not**
10 **Unconscionable.**

11 Morris argues that the choice of forum and confidentiality terms in the parties’
12 Arbitration Agreement are one-sided and unfair to such an extent that the arbitration terms
13 are “overall unconscionable” and “should be found void in the entirety.” (Doc. 19 at 14.)
14 In Arizona, an arbitration agreement, like any other contract, may be unenforceable due to
15 procedural or substantive unconscionability. *See Rizzio v. Surpass Senior Living LLC*, 492
16 P.3d 1031, 1035 (Ariz. 2021). “Substantive unconscionability concerns the actual terms of
17 the contract and whether they are overly oppressive or unduly harsh to one of the parties.”
18 *Id.* Procedural unconscionability looks to whether the bargain involved “unfair surprise,
19 fine print clauses, mistakes or ignorance of important facts.” *Maxwell v. Fid. Fin. Servs.,*
20 *Inc.*, 907 P.2d 51, 57–58 (Ariz. 1995). Morris’s arguments are unpersuasive. Morris
21 presents no evidence of procedural unconscionability, and the choice of forum and
22 confidentiality terms are not so unfair or unduly harsh as to be substantively
23 unconscionable.

24 First, the term designating Orange County, California as the forum for arbitration is
25 not unfairly one-sided simply because it requires Morris to travel from Arizona to
26 California to participate. The fact that Morris agreed to travel a limited distance to
27 California when he entered into the Arbitration Agreement is not a reason to find that
28 provision unconscionable. Notably, the forum-selection term is not as one-sided as Morris

1 suggests—a representative from PARDS would also be required to travel from Arizona to
2 California. (*See* Doc. 20 at 9.)

3 Second, Morris asserts that the confidentiality provision in the Arbitration
4 Agreement is unfair and unconscionable because it would impede discovery. That
5 provision states, “[e]xcept as may be required by law or as may be necessary to obtain court
6 enforcement of an arbitration award, neither a party nor an arbitrator may disclose the
7 existence, content, or results of any arbitration hereunder without the prior written consent
8 of both parties.” (Doc. 18-1 at 16 ¶ 5.) Morris asserts that courts have “regularly held
9 similar confidentiality terms unconscionable,” (Doc. 19 at 11), citing *Barnett v. V.T.*
10 *Motors LLC*, No. CV-21-01195-PHX-SPL, 2021 WL 5759113, *5 (D. Ariz. Dec. 3, 2021).
11 In *Barnett*, the court found the “sweeping scope” of the parties’ confidentiality provision
12 unfairly one-sided because it prevented the plaintiff from investigating and conducting
13 discovery while the employer had the benefit of knowledge about past arbitration
14 proceedings. 2021 WL 5759113, at *5. Morris contends that the confidentiality provision
15 in the Arbitration Agreement with PARDS similarly “den[ies] Plaintiff an ability to discuss
16 arbitration matters with potential witnesses to obtain evidence and testimony for the
17 litigation.” (Doc. 19 at 12.) The Court disagrees.

18 The confidentiality provision here is not so sweeping in scope as the provision at
19 issue in *Barnett* and does not categorically deny Morris the ability to obtain evidence. The
20 confidentiality provision applies only to the disclosure of the existence, content, or results
21 of the arbitration and does not prevent Morris from discussing the facts underlying the
22 dispute with any potential witness. It also contains a carveout that prevents the imposition
23 of a “gag order” on Morris because either party may disclose information with prior written
24 consent, and the arbitrator may issue document and witness subpoenas at the request of any
25 party.³ Thus, the confidentiality provision does not unfairly impede discovery and is not

26 ³ Rule 21 of JAMS Comprehensive Arbitration Rules & Procedures states: “At the written
27 request of a Party, all other Parties shall produce for the Arbitration Hearing all specified
28 witnesses in their employ or under their control without need of subpoena. The Arbitrator
may issue subpoenas for the attendance of witnesses or the production of documents.”

1 unconscionable or unenforceable.

2 **C. The Limitation-on-Remedies Provision Is Enforceable, But the Fee-**
 3 **Shifting Provision Must Be Severed.**

4 The parties' Arbitration Agreement precludes the award of punitive or
 5 non-economic damages and requires payment of attorneys' fees to a prevailing defendant.⁴
 6 Morris argues that these provisions are unenforceable because they prospectively waive
 7 his statutory rights under the ADA and Arizona law, and conflict with "important statutory
 8 public policies of anti-discrimination and anti-retaliation" found in the ADA and the
 9 Arizona Fair Wages and Healthy Families Act. (Doc. 19 at 10–13.)

10 Under the ADA, a plaintiff who succeeds in a judicial action alleging unlawful
 11 intentional discrimination may recover compensatory damages and, if the employer
 12 engaged in a discriminatory practice with malice or reckless indifference, punitive
 13 damages. 42 U.S.C. § 1981a(a)(2), (b)(1). Compensatory damages may include non-
 14 economic damages, such as emotional pain and suffering, although a total award is limited
 15 to \$50,000 where the employer has more than 14 and fewer than 101 employees, and
 16 \$100,000 where the employer has more than 100 and fewer than 201 employees.⁵
 17 *Id.* § 1981a(b)(3). Both the ADA and Arizona Fair Wages and Healthy Families Act permit
 18 the award of reasonable attorneys' fees to a prevailing plaintiff. *See id.* § 12205; A.R.S.

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 JAMS Comprehensive Arbitration Rules & Procedures, JAMS,
 20 <https://www.jamsadr.com/rules-comprehensive-arbitration/#Rule-21> (last accessed July
 21 25, 2023).

22 ⁴ The Arbitration Agreement provides that "the arbitrator shall be empowered to award an
 23 appropriate remedy, including but not limited to monetary damages, injunctive relief or
 24 other equitable relief, but shall have no power or authority to award damages for
 25 non-economic loss, including punitive or exemplary damages." (Doc. 18-1 at 15 ¶ 3(C).)
 The Arbitration Agreement also provides that "the substantially prevailing party shall
 recover from the losing party the reasonable attorneys' fees and costs incurred by the
 substantially prevailing party." (*Id.* at 16 ¶ 3(E).)

26 ⁵ Morris alleges that Defendants had more than 15 employees at all relevant times. (Doc.
 27 1 ¶ 5.) The precise number of employees employed by Defendants during the time period
 28 applicable to Morris's claims is not in evidence and is not relevant to the Court's
 determination here.

1 § 23-364(G). The Arizona law does not permit the award of fees or costs to a prevailing
2 defendant. *See* A.R.S. § 23-364(G). A defendant who prevails in an ADA case may only
3 be awarded fees upon a finding that the action was “frivolous, unreasonable, or without
4 foundation.” *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 421 (1978); *Brown v.*
5 *Lucky Stores, Inc.*, 246 F.3d 1182, 1190 (9th Cir. 2001) (applying *Christiansburg* rule in
6 ADA case).

7 Because arbitration is a matter of contract, if a party agrees to submit claims to
8 arbitration, the party will be held to that agreement unless the party can prove Congress
9 intended to preclude a waiver of judicial remedies for the statutory rights at issue. *Zoller v.*
10 *GCA Advisors, LLC*, 993 F.3d 1198, 1201 (9th Cir. 2021). Such intent may be found in the
11 statute’s text or legislative history, or inferred if there is an “inherent conflict” between the
12 purported waiver and the act’s underlying purposes. *Gilmer v. Interstate/Johnson Lane*
13 *Corp.*, 500 U.S. 20, 26 (1991). When the claims arise under federal laws protecting victims
14 of discrimination, such as Title VII or the ADA, the Ninth Circuit requires that the waiver
15 of statutory rights be knowing. *Zoller*, 993 F.3d at 1202–03; *Nelson v. Cypress Bagdad*
16 *Copper Corp.*, 119 F.3d 756, 762 (9th Cir. 1997) (“Any bargain to waive the right to a
17 judicial forum for civil rights claims, including those covered by the ADA, in exchange for
18 employment or continued employment must at the least be express: the choice must be
19 explicitly presented to the employee and the employee must explicitly agree to waive the
20 specific right in question.”).

21 Nothing in the text of the ADA precludes an individual from agreeing to arbitrate
22 disability discrimination claims or waiving the right to pursue punitive or non-economic
23 damages in arbitration, and Morris does not identify any relevant legislative history of the
24 statute. Nor has Morris met his burden to show that the underlying purposes of the ADA
25 are so inherently in conflict with the Arbitration Agreement’s limitation on damages that
26 the Court could infer that Congress intended to preclude such a waiver. While Morris is
27 correct that one of the purposes of the ADA is to deter disability discrimination and
28 compensate harmed individuals, the statute itself contains strict caps on total awards,

1 regardless of the type of damages. *See* 42 U.S.C. § 1981a(b)(3). By including these caps,
2 Congress chose to strike a balance that prospectively limits the amount an employer can
3 be liable for, even if punitive damages may be awarded. It is possible that, in some cases,
4 a plaintiff may succeed on an ADA claim but experience more loss than the available cap
5 and not be fully compensated for that harm.

6 The Arbitration Agreement similarly limits the amount Defendants may be liable
7 for by excluding punitive and non-economic damages, but it does not cap the total award.
8 In fact, “the arbitrator is empowered to award any appropriate remedy” to compensate a
9 prevailing plaintiff. (Doc. 18-1 at 15 ¶ 3(C).) When Morris entered into the Arbitration
10 Agreement, he had already been employed by Defendants for a year as an Associate
11 Dentist. Morris neither alleges that he lacked knowledge of any of the Arbitration
12 Agreement’s terms nor asserts that he lacked the opportunity to negotiate these terms. In
13 the Arbitration Agreement, Morris expressly agreed to arbitrate claims of discrimination
14 arising under the ADA or Arizona law and waived his right to seek punitive or non-
15 economic damages. Because there is no evidence that Congress intended to preclude such
16 a waiver, the Court finds that the limitation on damages in the Arbitration Agreement is
17 enforceable.

18 On the other hand, the Arbitration Agreement’s fee-shifting provision does conflict
19 with the purposes of the ADA and the Arizona Fair Wages and Healthy Families Act
20 because it could deter potential plaintiffs from bringing “important, close, but ultimately
21 unsuccessful civil rights cases.” *See Assoc. of Mex.-Am. Educators v. California*, 231 F.3d
22 572, 592–93 (9th Cir. 2000). Fee-shifting provisions like the one in the parties’ Arbitration
23 Agreement have been found unenforceable because they put the party “who demand[s]
24 arbitration at risk of incurring greater costs than they would bear if they were to litigate
25 their claims in federal court.” *Pokorny v. Quixtar, Inc.*, 601 F.3d 987, 1104 (9th Cir. 2010)
26 (finding fee-shifting clause substantively unconscionable). Under the parties’ Agreement,
27 it is possible that Morris might be required to pay fees that could not be awarded in a
28 judicial forum if he does not prevail in arbitration, even if his claims are not “frivolous,

1 unreasonable, or without foundation.” *See Brown*, 246 F.3d at 1190. There is an inherent
 2 conflict between these statutes’ purpose to deter discrimination and compensate harmed
 3 individuals and a fee-shifting clause that places plaintiffs at risk of bearing the full costs of
 4 pursuing close claims. As a result, this provision of the Arbitration Agreement is
 5 unenforceable.

6 The Arbitration Agreement contains a severability clause, providing that any term
 7 “declared void or unenforceable . . . shall be severed and/or modified by the arbitrator or
 8 court and the remainder of this agreement shall be enforceable.” (Doc. 18-1 at 16 ¶ 7.) The
 9 Court will modify the provision of the Arbitration Agreement providing that “the
 10 substantially prevailing party shall recover from the losing party the reasonable attorneys’
 11 fees and costs incurred by the substantially prevailing party,” (*see id.* at 16 ¶ 3(E)), and
 12 require that it be applied consistent with the ADA and Arizona law. In the event that
 13 Defendants are the substantially prevailing party on Morris’s ADA claim, the arbitrator
 14 may only award fees and costs upon a finding that the action was frivolous, unreasonable,
 15 or without foundation. In the event that Defendants are the substantially prevailing party
 16 on Morris’s Arizona law claim, Defendants may not be awarded fees or costs.

17 **III. The Arbitration Agreement Encompasses the Claims at Issue.**

18 Finally, federal policy favors referring claims to arbitration when the arbitration
 19 clause broadly covers matters “relating to” or “pertaining to” the contractual relationship.
 20 *See Chiron Corp.*, 207 F.3d at 1130–31. Similarly, courts enforce arbitration provisions
 21 covering “every dispute between the parties having a significant relationship to the contract
 22 and all disputes having their origin or genesis in the contract.” *See Simula, Inc. v. Autoliv,*
 23 *Inc.*, 175 F.3d 716, 721 (9th Cir. 1999).

24 Here, the Arbitration Agreement requires private binding arbitration as the forum to
 25 resolve “any claim, dispute, and/or controversy (including, but not limited to, any claims
 26 of discrimination and harassment, whether they be based on local or state law . . . [or] the
 27 Americans with Disabilities Act . . .) that the Employee or PARDS may have against the
 28 other.” (Doc. 18-1 at 15 ¶ 1.) The Agreement “specifically includes any claim . . . arising

1 from, related to, or having any relationship or connection whatsoever with the Employee's
 2 seeking employment with, employment by, termination of employment, or other
 3 association with PARDS," and any claim arising under the Employment Agreement. (*Id.*)
 4 As discussed above, Morris brings one claim alleging employment disability
 5 discrimination under the ADA and retaliation for the use of sick time in violation of the
 6 Arizona Fair Wages and Healthy Families Act. Thus, the Arbitration Agreement
 7 encompasses Morris's claims because each arises out of his employment relationship with
 8 Defendants and are expressly included in the Agreement.

9 CONCLUSION

10 The Ninth Circuit has held that courts have discretion under § 3 of the FAA to
 11 dismiss claims that are subject to an arbitration agreement. *Sparling v. Hoffman Constr.*
 12 *Co.*, 864 F.2d 635, 637–38 (9th Cir. 1988); *Kam-Ko Bio-Pharm Trading Co.*
 13 *Ltd-Australasia v. Mayne Pharma (USA) Inc.*, 560 F.3d 935, 940 (9th Cir. 2009). If the
 14 court determines that all claims raised in the action are subject to arbitration, the court may
 15 dismiss the action outright. *Johnmohammadi v. Bloomingdale's, Inc.*, 755 F.3d 1072,
 16 1073–74 (9th Cir. 2014). Having determined that a valid agreement to arbitrate all the
 17 claims at issue in this case exists between the parties, the Court will grant Defendants'
 18 Motion, dismiss this action, and compel Morris to submit his claims to binding arbitration
 19 pursuant to the Arbitration Agreement. The fee- and cost-shifting provision in Paragraph
 20 3(E) of the Agreement is modified consistent with this Order.

21 Accordingly,

22 IT IS ORDERED:

- 23 1. Defendants' Motion to Dismiss and Compel Arbitration (Doc. 18) is
 24 **GRANTED.**
- 25 2. Plaintiff's Complaint is **DISMISSED** without prejudice.
- 26 3. Plaintiff Morris is compelled to binding arbitration under the terms of the
 27 parties' Arbitration Agreement, except that Paragraph 3(E) of the Agreement is modified
 28 consistent with this Order.

Dated this 26th day of July, 2023.

- 15 -